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August 3, 2011

VIA ELECTRONIC FILING

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
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ENTERED
Office of Proceedings

AUG 3 - 2011

Part of
Public Record

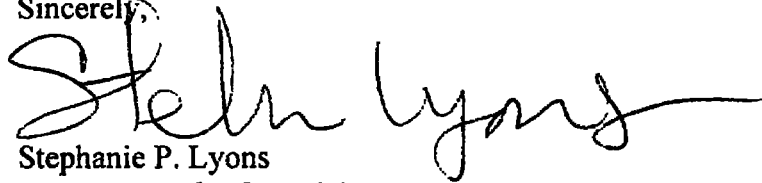
Re: Docket No. NOR 42128, South Mississippi Electric
Power Association v. Norfolk Southern Railway Company

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding is Complainant
South Mississippi Electric Power Association's Petition to Revise Procedural Schedule.

Thank you for your attention to this matter.

Sincerely,



Stephanie P. Lyons
An Attorney for Complainant

Enclosure

cc: Counsel for Defendant

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION)	
)	
Complainant,)	
)	
v.)	Docket No. NOR 42128
)	
NORFOLK SOUTHERN RAILWAY COMPANY)	
)	
Defendant.)	
)	

**COMPLAINANT'S PETITION TO REVISE
PROCEDURAL SCHEDULE**

Pursuant to 49 C.F.R. Parts 1104.7(b) and 1115.5(a), Complainant South Mississippi Electric Power Association ("SMEPA") respectfully requests that the Board modify the current procedural schedule with respect to the filing of evidence and briefs in this matter, as follows:

<u>Filing</u>	<u>Current Due Date</u>	<u>Proposed Due Date</u>
Complainant's Opening Evidence	September 2, 2011	December 9, 2011
Defendant's Reply Evidence	December 16, 2011	March 23, 2012
Complainant's Rebuttal Evidence	March 2, 2012	June 8, 2012
Closing Briefs	April 2, 2012	July 9, 2012

The procedural schedule currently governing this case was adopted by Board order served March 14, 2011. As explained further below, modification of that schedule is now required, due to the extended delay experienced in the production of essential rail traffic data by Defendant, Norfolk Southern Railway Company ("NS").

**GOOD CAUSE EXISTS TO MODIFY THE
CURRENT PROCEDURAL SCHEDULE**

As described in SMEPA's First Motion to Compel Discovery filed July 22, 2011 (*"Motion to Compel"*),¹ SMEPA's First Requests for Admissions, Interrogatories and Requests for Production of Documents were served on January 14, 2011. They included requests that NS produce data commonly referred to as railcar event and train event records, together with other data and records concerning freight traffic handled by NS in 2010. This traffic data routinely has been requested and produced in past cases under the *Coal Rate Guidelines*, and has been acknowledged by NS as relevant to core issues involved in application of the stand-alone cost ("SAC") constraint of the *Guidelines* in this case. *See Motion to Compel* at 4, 11-12. In response to SMEPA's requests, however, NS objected to producing the data unless and until it received advice from the Federal Railway Administration ("FRA") and/or the Transportation Security Administration ("TSA") that such production would not violate federal regulations governing the handling of so-called Sensitive Security Information ("SSI"). *See* 49 C.F.R. Parts 15.5 and 1520. *Motion to Compel* at 4-5.

Over SMEPA's objection, the Board solicited the views of FRA and TSA regarding NS' position, and those agencies entertained the request. While a resolution of the SSI issue initially was promised by mid-April, the FRA did not act until July 29, 2011, and NS produced the traffic data in question on August 2, 2011. To this point, however, it has been impossible for SMEPA to prepare its Opening Evidence

¹ That Motion is being withdrawn by SMEPA, in light of subsequent developments.

under the *Guidelines*' SAC constraint. Even if no follow-up inquiries or discussions in the wake of NS' production (which are routine in cases such as this) were necessary, it still will not be possible for SMEPA to meet the current September 2, 2011 due date for the submission of Opening Evidence. As the Board is aware from numerous prior cases, analysis of a defendant railroad's traffic data is a *foundational* step in developing evidence under the SAC constraint, with many other crucial and complex subsequent steps dependent on that analysis. Under these circumstances, good cause clearly exists to modify the current procedural schedule.

Assuming that there are no unreasonable delays in connection with the production of NS' traffic data and any necessary follow-up exchanges, SMEPA believes that the revised date for the filing of its Opening Evidence proposed herein (December 9, 2011) is reasonable.² The revised schedule allows approximately four (4) months from production of the NS traffic data to the submission of Opening Evidence, as compared to the more than six (6) months between the due date for data production in response to SMEPA's original discovery requests (mid-February) and the filing of Opening Evidence reflected in the original schedule. SMEPA therefore requests that the Board revise the procedural schedule in the manner described herein. SMEPA specifically reserves its right to seek further modifications should they be necessary in light of subsequent developments,

² The other revised dates proposed herein are derived from the December 9 date for Opening Evidence, using the same time intervals between filings that are reflected in the original schedule.

including but not limited to the need for follow-up inquiries and other activity related to production of the NS traffic data.

CONCLUSION

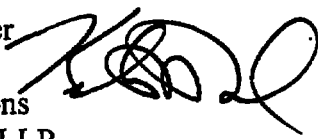
Good cause being shown to grant the relief sought, SMEPA requests that the Board revise the current procedural schedule, and establish new filing dates as set forth herein.

Respectfully submitted,

SOUTH MISSISSIPPI ELECTRIC POWER
ASSOCIATION

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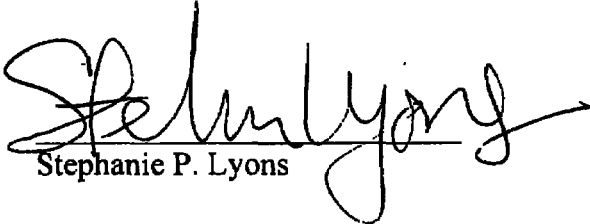
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Dated: August 3, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August, 2011, I caused copies of the foregoing Motion to Revise Procedural Schedule to be served by hand delivery and email on counsel for the Defendant, as follows:

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